

No. 02-6278

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

**AUG 13 2004**

**LEONARD GREEN, Clerk**

UNITED STATES OF AMERICA,  
Plaintiff - Appellee

v.

ROBERT KOCH,  
Defendant - Appellant

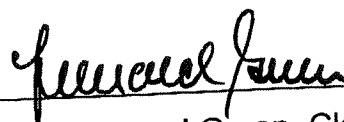
O R D E R

Before: BOGGS, Chief Judge; MARTIN, GUY, BATCHELDER, DAUGHTREY,  
MOORE, COLE, CLAY, GILMAN, GIBBONS, ROGERS, SUTTON,  
and COOK, Circuit Judges

This appeal came before the *en banc* court on August 11, 2004. Upon consideration of the briefs and oral argument of counsel, it is the conclusion of a majority of the members of the court that the judgment of the district court be affirmed. We hold, with a formal opinion and dissenting opinion to follow, that the decision of the United States Supreme Court in *Blakely v. Washington*, 124 S. Ct. 2531 (2004), does not invalidate the appellant's sentence under the federal Sentencing Guidelines. Accordingly, the district courts within the Sixth Circuit are hereby instructed to continue sentencing defendants in accordance with the Guidelines, as they did prior to *Blakely*. In the interest of judicial economy, and pending a definitive ruling by the Supreme Court, we recommend that the district courts within this circuit also announce at the time of sentencing a sentence pursuant to 18 U.S.C.A. §3553(a) (West 2000 & Supp. 2004), treating the Guidelines as advisory only.

IT IS SO ORDERED.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk